

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHAWN KEVIN MCKINNEY,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 1:24-cv-00708-CDB (SS)

ORDER GRANTING APPLICATION TO
PROCEED *IN FORMA PAUPERIS* AND
DIRECTING CLERK OF COURT TO ISSUE
SUMMONS, SCHEDULING ORDER, AND
CONSENT OR REQUEST FOR
REASSIGNMENT DOCUMENTS

(Doc. 2)

Shawn Kevin McKinney (“Plaintiff”) filed a complaint in this action on June 18, 2024, seeking review of the final decision of the Commissioner of Social Security denying disability benefits. (Doc. 1). Plaintiff did not pay the filing fee and instead filed an application to proceed *in forma pauperis* (or “IFP”) pursuant to 28 U.S.C. § 1915. (Doc. 2). For the following reasons, the Court finds issuance of the new case documents and Plaintiff’s application to proceed *in forma pauperis* appropriate.

I. Proceeding *in forma pauperis*

The Court may authorize the commencement of an action without prepayment of fees “by a person who submits an affidavit that includes a statement of all assets such person...possesses (and) that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). Here, the Court has reviewed Plaintiff’s application and financial status affidavit (Doc. 2) and

1 finds the requirements of 28 U.S.C. § 1915(a) are satisfied.

2 **II. Screening Requirement**

3 When a party seeks to proceed *in forma pauperis*, the Court is required to review the
4 complaint and shall dismiss the complaint, or portion thereof, if it is “frivolous, malicious or fails
5 to state a claim upon which relief may be granted; or...seeks monetary relief from a defendant
6 who is immune from such relief.” 28 U.S.C. §§ 1915(b) & (e)(2). A plaintiff’s claim is frivolous
7 “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not
8 there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S.
9 25, 32-33 (1992).

10 **III. Pleading Standards**

11 A complaint must include a statement affirming the court’s jurisdiction, “a short and plain
12 statement of the claim showing the pleader is entitled to relief; and...a demand for the relief
13 sought, which may include relief in the alternative or different types of relief.” Fed. R. Civ. P.
14 8(a). The purpose of the complaint is to give the defendant fair notice of the claims, and the
15 grounds upon which the complaint stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512
16 (2002). As set forth by the Supreme Court, Rule 8:

17 ... does not require detailed factual allegations, but it demands more than an
18 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
19 labels and conclusions or a formulaic recitation of the elements of a cause of action
will not do. Nor does a complaint suffice if it tenders naked assertions devoid of
further factual enhancement.

20 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted).
21 Vague and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673
22 F.2 266, 268 (9th Cir. 1982). The *Iqbal* Court clarified further,

23 [A] complaint must contain sufficient factual matter, accepted as true, to “state a
24 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S.
25 544, 570 (2009). A claim has facial plausibility when the plaintiff pleads factual
26 content that allows the court to draw the reasonable inference that the defendant is
27 liable for the misconduct alleged. *Id.* at 556. The plausibility standard is not akin
to a “probability requirement,” but it asks for more than a sheer possibility that a
defendant has acted unlawfully. *Id.* Where a complaint pleads facts that are “merely
consistent with” a defendant’s liability, it “stops short of the line between possibility
and plausibility of “entitlement to relief.”

28 *Iqbal*, 556 U.S. at 678. When factual allegations are well-pled, a court should assume their truth

1 and determine whether the facts would make the plaintiff entitled to relief; legal conclusions are
2 not entitled to the same assumption of truth. (*Id.*) The Court may grant leave to amend a complaint
3 to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*, 203
4 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

5 **IV. Discussion and Analysis**

6 Plaintiff seeks review of a decision by the Commissioner of Social Security denying
7 disability benefits. (Doc. 1). The Court may have jurisdiction pursuant to 42 U.S.C. § 405(g),
8 which provides:

9 Any individual after any final decision of the Commissioner made after a hearing to
10 which he was a party, irrespective of the amount in controversy, may obtain a review
11 of such decision by a civil action commenced within sixty days after the mailing to
12 him of such decision or within such further time as the Commissioner may allow.
13 Such action shall be brought in the district court of the United States for the judicial
14 district in which the plaintiff resides or has his principal place of business...The
15 court shall have power to enter, upon the pleadings and transcript of the record, a
16 judgment affirming, modifying, or reversing the decision of the Commissioner of
17 Social Security, with or without remanding the cause for a rehearing.

18 *Id.* Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be
19 reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).

20 Plaintiff alleges the Appeals Council issued a notice denying a request for review of the
21 decision on May 7, 2024, after which Plaintiff had 60 days, plus five days for delivery by mail, to
22 file a civil action. (Doc. 1 ¶ 10). Thus, Plaintiff’s complaint is timely. Plaintiff states that he
23 resides in Bakersfield, California, County of Kern. *Id.* at ¶ 2. Therefore, the Court has
24 jurisdiction over this action.

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V. Conclusion and Order

Plaintiff's complaint states a cognizable claim for review of the administrative decision denying Social Security benefits. ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's application to proceed *in forma pauperis* (Doc. 2) is GRANTED. The Clerk of Court is directed to issue the following: 1) a Summons; 2) the Scheduling Order; 3) the Order re Consent or Request for Reassignment; and 4) a Consent to Assignment or Request for Reassignment form.

IT IS SO ORDERED.

Dated: **June 20, 2024**


UNITED STATES MAGISTRATE JUDGE